

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of the Amendment
of the
Hawaii Probate Rules

ORDER AMENDING
RULE 126(e) OF THE HAWAII PROBATE RULES
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

IT IS HEREBY ORDERED that paragraph (e) and its commentary of Rule 126 of the Hawaii Probate Rules are amended, effective immediately, as follows (deleted material is bracketed in bold, new material is underlined):

(e) Distribution of Assets to Missing Beneficiaries. When a trustee is unable to locate a beneficiary entitled to [mandatory distribution of income or principal] real or personal property, at the termination of the trust, the trustee [may deposit the assets with the clerk of the court] shall dispose of the unclaimed assets by complying with the requirements of Hawaii Revised Statutes § 560:3-914. [The Trustee shall include with the instrument accompanying the deposit an affidavit describing all efforts taken by the trustee to locate the beneficiary. The clerk of the court shall designate any deposit received by the clerk pursuant to this rule with the same T. No. assigned to the petition. Trust deposits under this rule for more than one beneficiary shall all be filed under the same T. No., which in its caption shall refer to the trust from which the distributions were made.

COMMENTARY:

There have been problems in the past with the clerk of the court declining to accept an attempted deposit pursuant to HRS §560:3-914

without a court order even though no order is required by the statute. This rule clarifies that the deposit procedure is an administrative matter and that a court order is not necessary. However, to discourage trustees from taking advantage of the deposit system, subsection (d) of this rule requires the trustee subject to court approval of accounts to maintain current records on current and future vested beneficiaries and this subsection requires all reasonable efforts to be pursued to locate the beneficiary prior to deposit. The efforts required to locate the beneficiary are dependent upon the value of the assets involved, but at a minimum should include inquiry of all other beneficiaries as to their knowledge of the location of the missing beneficiary. Additional efforts might include publication of notice both in the State of Hawaii and in the jurisdiction in which the beneficiary last resided, according to the trustee's records, and hiring of a private investigator or beneficiary-search firm.

The rule further clarifies that a Petition for Deposit must be presented to the clerk of the court, which is then filed under the original case number for the trust, or if none has been assigned, under a newly-issued T. No. which will thenceforth be used for any other deposits with the clerk for that trust. In this way, the deposit is indexed under the name of the trust where a lost beneficiary is likely to look.】

DATED: Honolulu, Hawai'i, September 29, 2003.